

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 26-97

FINAL DECISION

████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 22, 1996, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated February 13, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Request for Relief

The applicant was separated from the Coast Guard on June 10, 1946, with an undesirable (under other than honorable conditions) discharge. He stated that his "undesirable" discharge was "inequitable and severe" on the basis of "today's standards."

The applicant asked the Board to grant him an upgrade from an undesirable discharge to an honorable discharge. He said that the reason he would like his discharge to be upgraded was so that he could leave an honorable discharge to his grandson, along with his campaign medals.

He admitted that he "got into trouble while in the Coast Guard." He and a shipmate were both convicted of auto theft and sent to the ██████████ State Reformatory; "[w]e both spent 10 [months] for our crime." The applicant also alleged that he had done some positive things while in the Service. For example, he had picked up several wounded marines during first-wave assaults on Saipan and taken them to a hospital ship.

Views of the Coast Guard

On January 29, 1998, the Board received the Coast Guard's views as to the current application.

The Coast Guard recommended that the application be denied as untimely on the ground that it was filed more than three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. 10 U.S.C. § 1552; 33 CFR § 52.22. According to the Coast Guard, the applicant's application was "untimely by about 47 years," and the applicant has provided no justification for that 47 year delay.

The Coast Guard said that the applicant provided no evidence that his characterization of his discharge as "undesirable" would be substantially better under contemporary standards. The Service said he was arrested on a charge of rape and was convicted of auto theft.

"The Coast Guard therefore recommends that this application be denied for untimeliness or, alternatively, for failure of proof."

Applicant's Response to the Views of the Coast Guard

The Board sent a copy of the views of the Coast Guard to the applicant on February 3, 1998, with a strong invitation to him to submit a response within 15 days. No response was received from the applicant.

SUMMARY OF RECORD

On August 12, 1947, the applicant applied to the Board of Review, Discharges, and Dismissals (BRDD) to have his undesirable discharge reviewed. He said that he was drunk at the time he stole a car, and that the ten months he spent in the [REDACTED] State Reformatory as the sentence imposed on him for that offense "was punishment enough." Since his release from prison, he married, bought a home, and established his own business. It is, he said, very important to him to have an honorable discharge so he can join a veterans organization "where a good discharge is required."

On October 24, 1947, the Board unanimously decided that no change should be made in the undesirable discharge issued to him by reason of trial and conviction by civil authorities. The Acting Secretary of the Treasury approved the Board's decision.

According to his military record, the applicant committed the following offenses:

* Being out of uniform, on 12/31/44;

* AWOL, about 4 days, on 8/31/45; AWOL, about 2 days, on 2/26/44; AWOL, about 43 hours, on 7/26/43; AWOL, about 11 days, on 4/18/42;

- * AOL, about 2 days, on 4/29/44; AOL, about 8 hours, on 7/26/43;
- * AHOM, gonococcus infection, uretha, about 32 days ; on 6/24/43;
- * Rape, about 2/26/46; the applicant was charged with committing rape in the State of Washington, but the charge was dropped; and
- * Ten months confinement in a civilian prison for auto theft.

FINDINGS AND CONCLUSIONS

1. Section 1552(b) of the United States Code provides that a claim for correction of a military record shall be made within three years after the discovery of an alleged error or injustice, unless the Board concludes that it is in the interest of justice to waive untimeliness and adjudicate the application on the merits.

2. An application for correction of the applicant's undesirable discharge was received by the BCMR more than 47 years after the date of the alleged error or injustice.

3. The applicant asked the Coast Guard to upgrade the undesirable discharge he received in 1946. A decision on his petition was reached after the Board of Review, Discharge, and Dismissals (BRDD) of the Coast Guard reviewed the applicant's record. In 1947, the BRDD and the Acting Secretary of the Treasury decided not to correct, change, or modify the undesirable discharge.

4. In 1992, the United States District Court for the District of Columbia said that the Board should conduct a "cursory review" of the merits of an application as part of its examination of the question of whether it was in the "interest of justice" to waive untimeliness and adjudicate the application on the merits. Allen v. Card, 799 F. Supp. 158 (D.D.C. 1992).

5. Cursory examination of the merits of this application indicates that it is not in the interest of justice to award relief to the applicant. The applicant committed auto theft and many military offenses and was given a complete review of his undesirable discharge.

6. It is not in the interest of justice to grant a second review of the decision, in the absence of new evidence or information or in the absence of any legal or factual error. Complete review of the merits on one occasion and cursory review on another occasion does not justify waiving the statute of limitations and considering the case again on the merits.

7. The applicant has not alleged an error or injustice on the part of the Coast Guard that would warrant a grant of relief.

8. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON SUCCEEDING PAGE]

ORDER

The application to correct the military record of
USCG, is denied

